FREEDOM OF INFORMATION ACT (FOIA)

- GOAL: INFORMED CITIZENRY
- ENACTED IN 1966
- TOOK EFFECT ON JULY 4, 1967
- ESTABLISHED A STATUTORY RIGHT OF PUBLIC ACCESS TO EXECUTIVE BRANCH INFORMATION IN THE FEDERAL GOVERNMENT

DOES NOT PERTAIN TO:

- LEGISLATIVE BRANCH
- JUDICIAL BRANCH
- STATE AND LOCAL GOVERNMENTS
- COMMERCIAL ENTITIES
- PRIVATE ENTITIES

FOIA

- DISCLOSURE STATUTE
- PERTAINS TO AGENCY RECORDS
  - CREATED OR OBTAINED BY AN AGENCY
  - UNDER CONTROL OF AGENCY
  - IT DOES NOT PERTAIN TO TANGIBLE OBJECTS (FURNITURE, EQUIPMENT, ETC)

TOOLS TO UNDERSTANDING FOIA

- DEPT OF JUSTICE ISSUES FOIA GUIDANCE
  - ‘FREEDOM OF INFORMATION ACT GUIDE AND PRIVACY ACT OVERVIEW” ISSUED BY DOJ EVERY 2 YEARS
  - WEBSITE: WWW.USDOJ.GOV/FOIA/
  - FOIA POST: WWW.USDOJ.GOV/OIP/FOIAPOST/MAINPAGE. HTM
- OMB ISSUES FEE AND FEE WAIVER GUIDANCE

TOOLS (Con'd)

- DOD IMPLEMENTATION: DOD 5400.7 AND 5400.7-R
  - Website: www.defenselink/pubs/foi
- DON IMPLEMENTATION: SECNAVINST 5720.42F
  - WWW.FOIA.NAVY.MIL (RESOURCE MATERIALS) HAS POLICY MEMOS THAT UPDATE THE SECNAVINST
  - CODIFIED AT 32 CFR PART 701

FOIA REQUESTERS

- UNLIKE PRIVACY, ANY PERSON CAN SEEK ACCESS TO RECORDS UNDER FOIA. THAT MEANS:
  - US CITIZENS
  - FOREIGNERS
  - FOREIGN GOVERNMENTS
  - BUSINESSES
  - STATE OR LOCAL GOVERNMENTS
  - MEMBERS OF THE PRESS

FOIA REQUESTERS

- THEY DON'T HAVE TO STATE OR JUSTIFY WHY THEY ARE SEEKING INFORMATION, UNLESS THEY WANT A WAIVER OR REDUCTION IN FEES
- THEY DON'T HAVE TO SIGN THEIR REQUESTS, UNLESS THEY ARE SEEKING INFORMATION ABOUT THEMSELVES
- THEY DON'T EXPECT THEIR NAMES TO BE KEPT PRIVATE UNLESS THEY ARE SEEKING INFO RE THEMSELF

MINIMUM REQUIREMENTS FOR FOIA REQUESTS

- MUST BE IN WRITING (MAIL, FAX, EMAIL) AND CITE OR IMPLY FOIA
- MUST REASONABLY DESCRIBE THE RECORDS BEING SOUGHT SO THAT A KNOWLEDGEABLE OFFICIAL CAN LOCATE THEM WITH REASONABLE EFFORT
- MUST STATE A WILLINGNESS TO PAY FEES OR SEEK A WAIVER OF FEES, IF FEES ARE APPLICABLE
  - IF FEES ARE APPLICABLE, SOLVE THE FEE ISSUE BEFORE PROCESSING

WITH THE PASSAGE OF E-FOIA IN 1996

- ACTIVITIES SHOULD HAVE A FOIA BUTTON ON THE FRONT PAGE OF THE WEB SITE TO ENABLE REQUESTERS TO LOCATE THEM
- SHOULD OFFER AN ELECTRONIC FOIA FORM
- SHOULD HAVE THE ABILITY TO ACCEPT FAX AND EMAIL REQUESTS

BUILD AN ADMINISTRATIVE RECORD

- FROM START TO FINISH – BUILD AN ADMINISTRATIVE RECORD THAT MEMORALIZES HOW THE REQUEST WAS PROCESSED
- THIS IS IMPORTANT SHOULD THE RESPONSE BE APPEALED OR LITIGATED

FOIA PROCESSING

- ONCE A “PERFECTED” REQUEST IS RECEIVED
  - ENTER IT INTO A TRACKING SYSTEM
    - Simple (routine) Requests
    - Complex Requests
    - Expedited Action Requests
  - ASSIGN IT A CASE NUMBER
  - PROCESS REQUESTS, FIRST IN-FIRST OUT ACCORDING TO WHERE THEY FALL IN A TRACKING SYSTEM
  - CONDUCT A SEARCH FOR RESPONSIVE DOCUMENTS

MULTI-TRACK PROCESSING QUEUE

- ROUTINE/SIMPLE TRACK
  - CAN BE EASILY ANSWERED WITHIN 20 WORKING DAYS
  - RESQUEST SPECIFICALLY IDENTIFIES RECORDS BEING SOUGHT

COMPLEX TRACK

- IF A REQUESTER IS PUT INTO A COMPLEX TRACK, TELL HIM/HER THAT BECAUSE THE REQUEST IS MULTI-FACETED AND REQUIRES INDEPTH RESEARCH AND ANY RECORDS REQUIRE EXTENSIVE REVIEW THAT
- RESPONSE CANNOT BE MADE WITHIN 20 WORKING DAYS

COMPLEX TRACK (CON'T)

- TELL REQUESTER IF HE/SHE CAN NARROW THE SCOPE OF THE REQUEST, IT CAN BE MOVED INTO THE SIMPLE QUEUE
- IN ANY CASE, FIRST-IN/FIRST-OUT PER PROCESSING TRACK

EXPEDITED TRACK

- DESIGNED TO PUT THE REQUESTER AHEAD OF OTHER REQUESTERS
  - REQUESTED MUST DEMONSTRATE "COMPELLING" NEED OR URGENCY
    - JEOPARDY TO LIFE OR PERSONAL SAFETY
    - THREATENED LOSS OF DUE PROCESS RIGHTS

EXPEDITED PROCESSING

- PRIMARILY ENGAGED IN DISSEMINATING INFORMATION AND THE INFORMATION BEING REQUESTED IS CONSIDERED TO BE NEWSBREAKING.

- DECISION TO GRANT OR DENY EXPEDITED PROCESSING MUST BE DETERMINED WITHIN 10 CALENDAR DAYS FROM DATE OF RECEIPT

FOIA PROCESSING

- RESPOND WITHIN 20 WORKING DAYS
  - IF UNABLE TO RESPOND, NEGOTIATE AN INFORMAL RESPONSE DATE WITH REQUESTER, OR
  - SEEK A FORMAL EXTENSION OF 10 ADDITIONAL WORKING DAYS
    - LOCATION OF RECORDS
    - VOLUME OF RECORDS
    - NEED TO CONSULT WITH AN EXTERNAL PARTY

FOIA PROCESSING (Con'd)

- A LETTER OF ACKNOWLEDGEMENT DOES NOT CONSTITUTE A RESPONSE WITHIN 20 WORKING DAYS

GRANTED IN FULL

- GRANTED IN FULL RESPONSE
  - LET THE REQUESTER KNOW THAT YOU HAVE IDENTIFIED ALL RESPONSIVE DOCUMENTS AND THEY ARE BEING RELEASED IN THEIR ENTIRETY
  - IF THERE ARE FEES, DETAIL HOW THEY WERE COMPUTED

PARIAL/TOTAL DENIAL RESPONSES

- THE FOIA REQUIRES ALL “REASONABLY SEGREGABLE” INFORMATION TO BE RELEASED
- IF YOU MAKE A PARTIAL DENIAL:
  - IDENTIFY INFORMATION WITHHELD
  - CITE TO THE SPECIFIC EXEMPTION(S)
  - MUST BE SIGNED BY AN INITIAL DENIAL AUTHORITY (IDA)
  - PROVIDE APPEAL RIGHTS
  - ADDRESS FEES

DENIAL RESPONSES

- DENIAL RESPONSES
  - CITE TO THE EXEMPTION(S) BEING CLAIMED
  - MUST BE SIGNED BY AN IDA (INITIAL DENIAL AUTHORITY)
  - APPEAL RIGHTS GIVEN
  - ADDRESS FEES

OTHER REASON RESPONSE LETTERS

- THERE ARE OTHER REASONS FOR NOT GRANTING OR DENYING A REQUEST
  - NO RECORD
  - REQUIRES REFERRAL
  - REQUESTER WITHDREW REQUEST
  - FEE RELATED ISSUE
  - REQUESTER FAILED TO REASONABLY DESCRIBE RECORDS BEING SOUGHT

OTHER REASON RESPONSES (CON'T)

- NOT A PROPER FOIA REQUEST
- NOT AN AGENCY RECORD
- DUPLICATE REQUEST
- OTHER

NO RECORD RESPONSE

- EXPLAIN WHAT SEARCH WAS UNDERTAKEN – WHERE, WHEN, ETC
- ADDRESS RECORDS RETENTION
- GIVE APPEAL RIGHTS
- RESPONSE DOES NOT HAVE TO BE SIGNED BY IDA

SAMPLE RESPONSE LETTERS

- SAMPLE RESPONSE LETTERS ARE DOWNLOADABLE FROM WWW.FOIA.NAVY.MIL (RESOURCE MATERIALS)

FOIA EXEMPTIONS

- THERE ARE NINE EXEMPTIONS (b)(1) through (b)(9)
- THEY ARE THOROUGHLY ADDRESSED IN A SEPARATE TRAINING PACKAGE

FOIA FEES

- DD FORM 2086 IS USED TO IDENTIFY ALL PROCESSING COSTS, WHICH ARE USED TO COMPILE THE ANNUAL FOIA REPORT
- NOT ALL COSTS REPORTED ON THE FORM ARE RECOUPABLE FROM THE REQUESTER
- FOIA FEES ADDRESSED IN SEPARATE TRAINING HANDOUT

APPELLATE AUTHORITIES

- TWO IN NAVY:
  - GENERAL COUNSEL
  - JUDGE ADVOCATE GENERAL

FOIA APPEALS

- REQUESTERS CAN APPEAL
  - FAILURE TO RESPOND WITHIN A TIMELY FASHION
  - DENIAL OR PARTIAL DENIAL OF INFORMATION
  - REFUSAL TO GRANT EXPEDITED PROCESSING
  - REFUSAL TO WAIVE OR REDUCE FEES
  - ADEQUACY OF SEARCH
  - NO RECORDS RESPONSE

RESPONDING TO FOIA APPEALS

- PROVIDE THE APPELLATE AUTHORITY WITH
  - COPY OF REQUEST
  - COPY OF RESPONSE/ OTHER RELATED CORRESPONDENCE
  - COPY OF RESPONSIVE DOCUMENTS
  - COPY OF REDACTED DOCUMENTS
  - JUSTIFICATION

RECORDS RETENTION

- FILES RETAINED FOR 2 YEARS CONSIST OF
  - GRANTED REQUESTS
  - OTHER REASON RESPONSE REQUESTS
- FILES RETAINED FOR 6 YEARS CONSIST OF RECORDS WHICH HAVE BEEN DENIED IN WHOLE OR IN PART

PUBLIC AFFAIRS

- ALL REQUESTS RECEIVED FROM A MEMBER OF THE PRESS SHOULD BE SHOWN TO YOUR LOCAL PUBLIC AFFAIRS OFFICE
- ANY “HIGH VIS” REQUESTS RECEIVED FROM THE PRESS SHOULD BE PROMPTLY COPIED TO DNS-36

ATTENTION FOIA

- TOOL USED BY DNS-36 TO ALERT SENIOR NAVY OFFICIALS TO POTENTIAL “HIGH-VIS” FOIA REQUESTS RECEIVED FROM MEMBERS OF THE PRESS

YOUR ROLE AND RESPONSIBILITY

- COMMUNICATE
- NEGOTIATE
- FACILITATE
- MEDIATE
- CONGRATULATE